

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 VICTOR RAFAEL GONZALEZ-CRUZ,

9 Petitioner,

10 v.

11 KEVIN MCALEENAN, et al.,

12 Respondents.

CASE NO. C19-2031-RSM

ORDER OF DISMISSAL

13 This matter comes before the Court on the Report and Recommendation (“R & R”) of the
14 Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. #12. No objections to the R
15 & R were filed. For the reasons set forth below, this Court ADOPTS the Report and
16 Recommendation, GRANTS the Government’s Motion to Dismiss and DENIES Petitioner’s
17 habeas petition.

18 **I. BACKGROUND**

19 On December 12, 2019, Petitioner, proceeding pro se, filed this 28 U.S.C. § 2241
20 immigration habeas action to obtain release from detention or a bond hearing. Dkt. #1. The
21 Government moved to dismiss on the basis that this action is moot because of Petitioner’s removal
22 to Mexico pursuant to an administratively final order of removal. Dkt. #5. On February 12, 2020,
23 Judge Tsuchida recommended granting the Government’s Motion. Dkt. #12. Because the petition

1 challenges only the length and conditions of his immigration detention, the R & R reasoned,
2 Petitioner's claims were fully resolved upon release from custody. *Id.* at 2. The R & R also found
3 that because district courts do not have jurisdiction to review challenges to removal orders, its
4 conclusion was not altered by Petitioner's claim that he was not subject to a final order of removal.
5 *Id.* (citing 8 U.S.C. §1252(a)(5)). Finally, the R & R found no legal basis for construing
6 Petitioner's brief as an application for reentry. *Id.* For these reasons, the R & R concluded "there
7 is no collateral consequence that could be redressed by the Court" and recommended dismissal of
8 this action without prejudice.

9 Petitioner has failed to file any objections to the R & R. The Court's docket reflects that
10 Petitioner did not receive a copy of the R & R, but also that Petitioner did not file a notice of
11 change of address such that a copy could be provided. Dkt. #13.

12 II. DISCUSSION

13 A district court has jurisdiction to review a Magistrate Judge's report and recommendation
14 on dispositive matters. *See* Fed. R. Civ. P. 72(b). "The district judge must determine de novo any
15 part of the magistrate judge's disposition that has been properly objected to." *Id.* "A judge of the
16 court may accept, reject, or modify, in whole or in part, the findings or recommendations made
17 by the magistrate judge." 28 U.S.C. § 636(b)(1). The advisory committee's notes to Rule 72(b)
18 of the Civil Rules state: "When no timely objection is filed, the court need only satisfy itself that
19 there is no clear error on the face of the record in order to accept the recommendation" of a
20 magistrate judge. Fed. R. Civ. P. 72(b) Advisory Committee's Note to 1983 Amendment.

21 The Court is aware that Petitioner did not receive a copy of the R & R and therefore has
22 not evaluated Judge Tsuchida's recommendations. However, Petitioner was required to file a
23 notice of change of address to keep the Court and opposing parties advised as to his current address.

1 Local Rules W.D. Wash. LCR 41(b)(2). The Court's docket reflects that the R & R was mailed to
2 Petitioner on February 12, 2020. Dkt. #12. Petitioner's copy of this R & R was returned to the
3 Court as undeliverable mail on February 21, 2020. Dkt. #13.

4 In an abundance of caution, the Court gave Petitioner two weeks past the noting date of the
5 R & R to file the requisite notice of change of address. Having reviewed the Petition, the
6 Government's Motion to Dismiss, the R & R, and the remainder of the record, the Court finds no
7 clear error in the R & R's recommendation to dismiss on grounds of mootness. For this reason,
8 the Court sees no reason to delay disposition of the Motion to Dismiss and the R & R. *See Carey*
9 *v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (where petitioner failed to file notice of change of
10 address, an order to show cause why dismissal is not warranted "would only find itself taking a
11 round trip tour through the United States mail.").

12 Accordingly, the Court finds and ORDERS:

- 13 (1) The Court ADOPTS the Report and Recommendation, Dkt. #12.
14 (2) The Government's motion to dismiss, Dkt. #5, is GRANTED.
15 (3) Petitioner's habeas petition is DENIED.
16 (4) This action is DISMISSED without prejudice.
17 (5) The Clerk is directed to send copies of this Order to the parties and to Judge

18 Tsuchida.

19
20 Dated this 23 day of March, 2020

21
22 

23 RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE